

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JAMIE L. HUSTEAD,	)	
Plaintiff	)	
	)	
	)	
v.	)	Civil Action No. 08-30119-KPN
	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the Social	)	
Security Administration,	)	
Defendant	)	

MEMORANDUM AND ORDER REGARDING PLAINTIFF'S MOTION FOR  
JUDGMENT ON THE PLEADINGS AND DEFENDANT'S MOTION TO AFFIRM  
THE DECISION OF THE COMMISSIONER (Document Nos. 10 and 12)

May 6, 2009

NEIMAN, U.S.M.J.

This is an action for judicial review of a final decision by the Commissioner of the Social Security Administration ("Commissioner") regarding an individual's entitlement to Supplemental Security Income ("SSI") pursuant to 42 U.S.C. § 1381 *et seq.* Jamie Hustead ("Plaintiff") asserts that the Commissioner's decision denying her such benefits -- memorialized in a January 18, 2008 decision of an administrative law judge - is in error. She has filed a motion for judgment on the pleadings seeking to reverse or remand the decision and the Commissioner, in turn, has moved to affirm.

With the parties' consent, this matter has been assigned to the undersigned for all purposes, including entry of judgment. See 28 U.S.C. § 636(c); Fed. R. Civ. P. 73(b). For the reasons that follow, the Commissioner's motion to affirm will be allowed and Plaintiff's motion for judgment on the pleadings will be denied.

## I. STANDARD OF REVIEW

A court may not disturb the Commissioner's decision if it is grounded in substantial evidence. See 42 U.S.C. §§ 405(g) and 1383(c)(3). Substantial evidence is such relevant evidence as a reasonable mind accepts as adequate to support a conclusion. *Rodriguez v. Sec'y of Health & Human Servs.*, 647 F.2d 218, 222 (1st Cir. 1981). The Supreme Court has defined substantial evidence as "more than a mere scintilla." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Thus, even if the administrative record could support multiple conclusions, a court must uphold the Commissioner's findings "if a reasonable mind, reviewing the evidence in the record as a whole, could accept it as adequate to support [her] conclusion." *Ortiz v. Sec'y of Health & Human Servs.*, 955 F.2d 765, 769 (1st Cir. 1991) (citation and internal quotation marks omitted).

The resolution of conflicts in evidence and the determination of credibility are for the Commissioner, not for doctors or the courts. *Rodriguez*, 647 F.2d at 222; *Evangelista v. Sec'y of Health & Human Servs.*, 826 F.2d 136, 141 (1st Cir. 1987). A denial of benefits, however, will not be upheld if there has been an error of law in the evaluation of a particular claim. See *Manso-Pizarro v. Sec'y of Health & Human Servs.*, 76 F.3d 15, 16 (1st Cir. 1996). In the end, the court maintains the power, in appropriate circumstances, "to enter . . . a judgment affirming, modifying, or reversing the [Commissioner's] decision" or to "remand [ ] the cause for a rehearing." 42 U.S.C. § 405(g).

## II. BACKGROUND

Plaintiff is twenty-four years of age and has a ninth grade education, a three year-old daughter and virtually no work history. (Administrative Record (“A.R.”) at 14-15.) The only job Plaintiff had in her life was when she worked as a waitress, slipped and fell on her second day on the job, and mutually agreed with her employer that she was not suited for that type of work. (A.R. at 15.)

Plaintiff applied for SSI benefits on September 13, 2006, alleging disability from arthritis in her spine beginning on August 1, 2006. (A.R. at 107-111.)<sup>1</sup> Her claim was denied initially and on review by a federal reviewing officer. (A.R. at 74-79, 80-82.) One week after a January 11, 2008 hearing at which both Plaintiff (represented by counsel) and a vocational expert testified, an administrative law judge (“the ALJ”) found Plaintiff not disabled. (A.R. at 9-65.) Thereafter, the Commissioner’s Decision Review Board affirmed the ALJ’s decision, thereby rendering the decision final for purposes of Plaintiff’s appeal. (A.R. at 1-6.)

Plaintiff’s physical impairments can be summarized quickly. Between October of 2005 and June of 2007, Plaintiff -- upon complaining to her nurse practitioner, Gloria Stewart, and others (e.g., a physical therapist and an orthopedist) of back spasms and pain -- received intermittent physical therapy and various pain medication. (See A.R. at 169-75, 209-35, 238-48, 255-57, 265-68, 270.) Twice during this time, Plaintiff’s spine was x-rayed. The first set of x-rays, in November of 2006, identified only minimal degenerative osteoarthritis while the second set, in March of 2007, showed a

---

<sup>1</sup> Plaintiff also alleged disability from certain mental conditions -- *i.e.*, “ADHD” and her status as a “slow learner” -- but has not pursued such claims here.

completely normal spine. (A.R. at 174-75, 247-48.) An April 5, 2007 MRI was similarly unremarkable; it revealed only mild degenerative joint disease at L4-5 and L5-S1 and mild generalized disc bulge at L4-5. (A.R. at 246.) Even so, Plaintiff underwent lumbar facet injections in June of 2007 and continued to complain of pain. (A.R. at 265.)

On December 28, 2007, Nurse Stewart completed a Physical Residual Functional Capacity Questionnaire. In it, she assessed that Plaintiff would have significant difficulty working, specifically, that she would need to walk around every five minutes for five minutes at a time during an eight-hour work day, take unscheduled breaks every half-hour for at least one hour during an eight-hour work day, and be absent more than four days per month. (A.R. at 284-87.) She also assessed that Plaintiff could never stoop, bend, crouch, squat or climb ladders, rarely climb stairs, only lift and carry less than ten pounds, and only sit or stand for under two hours in an eight-hour work day. (*Id.*) This assessment was at odds with a December 2006 assessment by Dr. Malin Weeratne, a state agency consultant, who opined that Plaintiff had no push-pull limitations and could lift twenty pounds occasionally and ten pounds frequently, stand, walk or sit for approximately six hours in an eight-hour work day, and occasionally climb, balance, crouch, and crawl. (A.R. at 182-89.) Nurse Stewart's assessment also conflicted with evidence from other medical providers who variously observed that Plaintiff could stand and walk without abnormalities. (See A.R. at 266-67, 270.)

At the January 11, 2008 administrative hearing, the ALJ took testimony from Plaintiff and received her medical records into evidence. (A.R. at 12, 22-65.) Near the

end of the hearing, the ALJ posed a hypothetical question to the vocational expert, asking her to consider whether work was available for an individual of Plaintiff's age, educational, and lack of work background, with the following limitations: she could never bend, crawl, crouch, twist, kneel, or stoop, needed a sit-stand option, and required only simple one and two-step activities. (A.R. at 57.) The vocational expert testified that, nationally, there would be 43,000 assembler or parking lot attendant jobs for such an individual and 900 such jobs available in Massachusetts. (A.R. at 57-58.) Later, when pressed by Plaintiff's counsel if there would be any jobs available to such an individual who also had to be absent more than four days per month -- apparently picking up on that aspect of Nurse Stewart's assessment -- the vocational expert testified that no jobs would be available. (A.R. at 58.)

In his decision dated January 18, 2008, the ALJ assigned Plaintiff a residual functional capacity that essentially paralleled the hypothetical that he posed to the vocational expert. (A.R. at 19.) The ALJ then concluded, as the vocational expert had testified, that Plaintiff could work as either an assembler or parking lot attendant and, hence, was not disabled. (A.R. at 21.) In reaching this conclusion, the ALJ specifically gave Nurse Stewart's questionnaire "some, but not controlling weight," as he found her "conclusions (in effect saying that [Plaintiff] is incapable of any substantial gainful activity) inconsistent with the factual basis (a back impairment of mild severity) on which those conclusions rest." (A.R. at 17.)

### III. DISCUSSION

An individual is entitled to SSI benefits if, among other things, she is under a

disability and has a financial need. See 42 U.S.C. § 1381a. Plaintiff's need is not challenged. As will become evident, however, the court has determined that the ALJ's decision -- that Plaintiff is not disabled -- is supported by substantial evidence and not predicated on any error of law.

A. Disability Standard and the ALJ's Decision

The Social Security Act (the "Act") defines disability, in part, as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 423(d)(1)(A). See also 42 U.S.C. § 1382c(a)(3)(A) (similar). An individual is considered disabled under the Act

only if [her] physical and mental impairment or impairments are of such severity that [s]he is not only unable to do [her] previous work but cannot, considering [her] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which [s]he lives, or whether a specific job vacancy exists for [her], or whether [s]he would be hired if [s]he applied for work.

42 U.S.C. §§ 423(d)(2)(A) and 1382c(a)(3)(B). See generally *Bowen v. Yuckert*, 482 U.S. 137, 146-49 (1987).

In determining disability, the Commissioner follows the five-step protocol described by the First Circuit as follows:

First, is the claimant currently employed? If [s]he is, the claimant is automatically considered not disabled.

Second, does the claimant have a severe impairment? A "severe impairment" means an impairment "which

significantly limits the claimant's physical or mental capacity to perform basic work-related functions." If [s]he does not have an impairment of at least this degree of severity, [s]he is automatically not disabled.

Third, does the claimant have an impairment equivalent to a specific list of impairments in the regulations' Appendix 1? If the claimant has an impairment of so serious a degree of severity, the claimant is automatically found disabled.

. . . .

Fourth . . . does the claimant's impairment prevent [her] from performing work of the sort [s]he has done in the past? If not, [s]he is not disabled. If so, the agency asks the fifth question.

Fifth, does the claimant's impairment prevent [her] from performing other work of the sort found in the economy? If so [s]he is disabled; if not [s]he is not disabled.

*Goodermote v. Sec'y of Health & Human Servs.*, 690 F.2d 5, 6-7 (1st Cir. 1982).

In the instant case, the ALJ found as follows with respect to these questions:

Plaintiff had not engaged in substantial gainful activity since the alleged onset of her disability (question one); Plaintiff has an impairment that is "severe," but which does not meet or medically equal one of the listed impairments in Appendix 1 (questions two and three); Plaintiff has no past relevant work (question four); and Plaintiff is able to perform a significant number of jobs in the national economy, including work as an assembler or parking lot attendant (question five). (A.R. at 14-21.) As a result, the ALJ concluded that Plaintiff does not suffer from a disability. (A.R. at 21.)

#### B. Analysis

The several assertions made by Plaintiff in support of her motion have one

common theme: that the ALJ should have given controlling weight to the residual functional capacity assessment that Nurse Stewart proffered in her December 28, 2007 questionnaire. This main argument, along with Plaintiff's related contentions, can be disposed of in short order.

First and foremost, Plaintiff ignores the fact that the ALJ was actually precluded from giving controlling weight to Nurse Stewart's residual functional capacity assessment because she is not an "acceptable medical source." In determining whether an individual is disabled, the Commissioner considers evidence from both "acceptable medical sources," such as licensed physicians, on the one hand and "other sources," such as Nurse Stewart and other nurse practitioners, on the other. 20 C.F.R. §§ 416.913(a), (d)(1) (2009). See Social Security Ruling ("SSR") 06-03p, at \*\*1-2. However, because "acceptable medical sources" are the ones who can *establish* the existence of a medically determinable impairment, they are the only sources whose opinions are potentially entitled to controlling weight. See SSR 06-03p, at \*2 (citing 20 C.F.R. §§ 416.902, 416.927(d)). See also *Hardin v. Barnhart*, 468 F. Supp. 2d 238, 250 (D. Mass. 2006) (holding that hearing officer properly gave limited weight to nurse's RFC assessment).

Second, the ALJ appropriately discounted the weight he did give to Nurse Stewart's assessment because it was inconsistent with her own treatment notes and other evidence in the record. When weighing the opinion of medical sources, the Commissioner considers several factors, including (1) how long the source has known or treated the plaintiff, (2) how consistent the opinion is with other evidence, (3) the

degree to which the source presents relevant evidence to support her opinion, (4) how well the source explains her opinion, and (5) whether the source has a specialty or expertise related to the plaintiff's impairments. See 20 C.F.R. § 416.927(d) (2009); SSR 06-03p. Moreover, administrative law judges may reject the opinions of treating sources -- whether "acceptable medical sources" or "other sources" -- if they are not well supported by medically-acceptable clinical and laboratory diagnostic techniques or are inconsistent with the other substantial evidence of record. See 20 C.F.R. § 416.927(d)(2) (2009). Here, Nurse Stewart's limitations on Plaintiff's ability to sit, walk, etc., lacked support in her own treatment notes which showed that Plaintiff suffered from only mild conditions, e.g., minimal degenerative osteoarthritis, a bulging disc and joint disease. (See A.R. at 127, 234, 238, 284.) Moreover, the x-rays and MRI revealed only nominal impairments, other medical providers observed that Plaintiff stood and walked without abnormalities, and the state agency physician, Dr. Weeratne, opined that Plaintiff could stand, walk or sit for approximately six hours in an eight-hour work day.

Third, there is simply no substance to Plaintiff's argument -- if argument it is -- that the ALJ improperly discounted her credibility.<sup>2</sup> For one thing, it is well-settled that courts must generally defer to credibility determinations made by administrative law judges. See *Frustaglia v. Sec'y of Health & Human Servs.*, 829 F.2d 192, 195 (1st Cir.

---

<sup>2</sup> At most, Plaintiff simply cites, without any analysis, two Eighth Circuit decisions which, together, merely state the general proposition that administrative law judges ought not blithely ignore claimants' subjective complaints of pain. See *Underwood v. Bowen*, 807 F.2d 141, 143 (8th Cir. 1986); *Nelson v. Heckler*, 712 F.2d 346, 348 (8th Cir. 1983).

1987). *See also Bianchi v. Sec'y of Health & Human Servs.*, 764 F.2d 44, 45 (1st Cir. 1985) (administrative law judges are not required to take a claimant's subjective allegations at face value) (citation omitted). More importantly, however, the ALJ elicited evidence from Plaintiff herself -- e.g., her ability to bathe, dress, take care of her daughter, ascend and descend three flights of stairs, and engage in housework (see A.R. at 17, 50, 119, 121, 181) -- that actually contradicted her complaints. The ALJ observed as well that Plaintiff once sought treatment specifically to bolster her disability claim, thus further undermining her credibility. (See A.R. at 20.)<sup>3</sup>

Fourth and finally, the ALJ's residual functional capacity assessment of Plaintiff - that she could not bend, crawl, crouch, twist, kneel, or stoop, needed a sit-stand option, and required only simple one and two-step activities -- conformed precisely with the evidence of record, Nurse Stewart's questionnaire notwithstanding. And, as the VE testified, there are sufficient jobs available to such an individual who also possessed Plaintiff's age and educational background.

#### IV. CONCLUSION

For the reasons stated, the court concludes that the ALJ's decision was based on substantial evidence and not predicated on errors of law. Accordingly, the Commissioner's motion to affirm is ALLOWED and Plaintiff's motion for judgment on the pleadings is DENIED.

---

<sup>3</sup> According to Allison Cook, Ph.D., of the Carson Center for Adults and Families, Plaintiff visited her office on June 4, 2007 "because she was recently turned down for disability, and had the idea that if we could establish that she has ADHD, it would help with her appeal." (A.R. at 261.)

IT IS SO ORDERED.

DATED: May 6, 2009

/s/ Kenneth P. Neiman  
KENNETH P. NEIMAN  
U.S. Magistrate Judge